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Embassy Kabul  
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E.O. 12958: DECL: 02/22/2020  
TAGS: [PGOV](#) [KDEM](#) [AF](#) [PK](#)  
SUBJECT: NANGARHAR RULE OF LAW CONFERENCE HIGHLIGHTS  
JUDICIAL SYSTEM,S PROBLEMS AND POSSIBLE SOLUTIONS

Classified By: Interagency Provincial Affairs Deputy Director Hoyt Yee  
for reasons 1.4(b) and (d).

¶1. (C) A two-day provincial justice conference in Nangarhar February 1-2 brought national justice representatives together with their Nangarhari counterparts to discuss systemic justice challenges in the province. A small-group format resulted in frank discussions of provincial government corruption and dysfunction, with plenty of finger pointing between line ministries. Lack of communication between justice officials, lack of enforcement mechanisms for judicial and ministerial decisions, lack of infrastructure and resources, and fiercely territorial attitudes towards cases (or prisoners) that offer the opportunity for large bribes were identified as major challenges. Next steps include more frequent and effective judicial coordination meetings, creation of a Provincial Development Council (PDC) technical working group, anti-corruption training and application of enhanced pressure on all instruments of government to press for judicial reform. Although the conference highlighted serious problems with Nangarhar,s justice system, the robust senior level attendance and intensity of the dialogue suggests that many provincial leaders want the justice system to function properly. End summary.

GIROA Officials Present Provincial Perspective  
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¶2. (C) More than 200 provincial justice officials gathered at Nangarhar Governor Gul Agha Sherzai,s conference hall on February 1-2 for a conference organized by PRT Nangarhar and INL,s Justice Sector Support Program (JSSP). The two-day event brought together national representatives from the Ministry of Interior (MOI), Ministry of Justice (MOJ), National Directorate of Security (NDS), Attorney General,s office and the Afghan Independent Human Rights Commission (AIHRC) with their Nangarhari counterparts to discuss systemic justice issues, and possible solutions. Prominent tribal and religious leaders, all 22 provincial sub-governors, NGOs, and the deans of Nangarhar University,s Sharia Law and Political Science faculties attended. The first day involved brainstorming and breakout groups (District Governors, Judges, MOJ and Corrections, Police, Prosecutors, tribal leaders and human rights groups). Day two consisted of presentations by the national-level officials who chaired each group.

¶3. (C) The small group format resulted in an unusually candid series of public exchanges among police, prosecutors and

judges, each of whom openly accused the others of corruption and/or incompetence. At one point, the dialogue became so animated that some provincial officials felt the need to hijack the microphone (and the agenda) to defend their reputations. Nangarhar,s Chief Prosecutor inadvertently highlighted the impotence of the provincial justice system by admitting that he had personally paid off squatters to leave his property, rather than deal with the laborious process of a lawsuit. The conference ended with a fiery speech from Governor Sherzai condemning the inability of provincial prosecutors and judges to convict criminals, and a frank discussion of corruption by Shinwari tribal elder Malik Usman, who laughingly admitted to having bribed district governors and many other provincial justice officials in attendance.

MOJ: A Failure to Communicate?

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14. (C) Lack of justice sector coordination was the most common complaint raised at the conference. The MOJ (which runs the prison system) repeatedly cited arbitrary detention policies, claiming that some prisoners are incarcerated without trial for much longer than the nine-month legal limit. Others are kept in jail despite acquittal at trial or serving their full sentences - either because prosecutors or judges fail to inform corrections officials of the disposition of their cases, or because a monetary judgment against the inmates could not be paid.

15. (C) Though the Huqoq department has lead responsibility for property disputes, some participants noted that claimants often go directly to district governors or the Ministry of Agriculture,s property department for resolution. In cases where land disputes lead to violence, the MOJ complained that prosecutors often take over both the criminal case and the underlying civil dispute. The MOJ lamented that in the rare cases they are permitted to resolve, they are powerless to

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enforce the decisions. The MOJ proposed criminalizing land-grabbing so that police would enforce compliance. The MOJ also expressed frustration with the Afghan Supreme Court,s habit of reconsidering and revising its rulings in property cases, leaving the MOJ (which is tasked with enforcing the Supreme Court,s property decisions) to re-apportion land previously allocated or sold in conformance with the original holding.

16. (C) MOJ Deputy Minister Hashemzai noted the constitutional guarantee of counsel for indigent defendants cannot be met without more resources. Participants agreed that international donor funding could resolve this issue, though of course this raises questions of sustainability. Hashemzai also delivered broad criticism of police, for detaining prisoners in excess of 72 hours for the purpose of extracting money from their families, and of prosecutors, for taking bribes to dismiss cases, and for failing to move cases through the system within the required month. The Deputy Minister also criticized judges for inappropriately hearing appeals of cases that received final judgments in trial courts in accordance with the law.

Attorney General: Nothing Can Come of No Evidence

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17. (C) Prosecutors noted that police rarely comply with legal requirements to notify the Attorney General,s (AG,s) office within 24 hours of detaining a suspect, and often keep detainees well beyond the 72 hour statutory limit in order to extract bribes. Prosecutors defensively claimed that their own detainee releases are a result of insufficient evidence received from police, and not because they have taken bribes. They gave the specific example of an individual, Zabibullah from Chaparahar district, who was detained by police for possession of a special phone rigged to detonate

IEDs, but whose evidence packet lacked an actual phone. Prosecutors also complained that police often failed to comply with the requirement to bring along a prosecutor on all search warrant executions. Prosecutors said that in cases where suspects are released on a guarantee (the Afghan equivalent of bail, using honor as collateral instead of cash), police are unwilling to track down guarantors when a defendant fails to appear for a hearing.

18. (C) In an unscheduled speech, Nangarhar Chief Prosecutor Abdullah Qayum denied any coordination issues, claiming that his office had no problems with the police. Qayum,s speech, while rambling and at times incoherent, appeared to be an attempt to distance himself from the criticism articulated by his prosecutors of other ministries. He ended by discussing the importance of resolving property disputes in Nangarhar, inadvertently highlighting the impotence of Nangarhar,s legal system by admitting that he had personally paid off squatters to leave his property rather than deal with the laborious process of a lawsuit.

#### Judges Also Frustrated

19. (C) The judges were by far the most organized and productive group at the conference. Justice Norzai, who chaired the group, discussed widespread dissatisfaction with the quality of evidence presented at trial, noting that even basic evidence such as crime scene photographs or physical evidence (i.e., guns or drugs) were rarely provided at trial. Rather than request financial assistance for the judiciary, the judges requested assistance in developing provincial forensic capabilities, including equipment, facilities and training for provincial crime scene investigators. The current system requires evidence to be sent to Kabul for forensic analysis, which results in frequent chain-of-custody problems, numerous errors and huge delays in the trial process.

110. (C) The judges also voiced frustration with their inability to effect compliance with their decisions or compel court appearances. If a witness does not appear in court without justification, the Court is permitted to order the police to accompany them to trial, and impose a 500 Afghani fine. However, the judges explained that police seem unwilling or unable to serve process on witnesses or defendants, especially in tribal areas, and suggested developing a program permitting local tribal leaders to function as legal process servers (one who delivers or serves legal documents to a defendant or individual involved in a court case). Other issues raised by the judges included a need for increased security for high-profile judges dealing

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with sensitive cases and the widespread dearth of defense counsel.

#### Comment: Next Steps

111. (C) The conference succeeded in identifying key issues impeding the rule of law in Nangarhar province. USG Rule of Law Advisors plan to work with Afghan counterparts and the United Nations Assistance Mission in Afghanistan to hold more frequent and more effective judicial coordination meetings. We will also work with Afghan officials to create a Provincial Development Council (PDC) technical working group on governance, rule of law and human rights, provide anti-corruption training and apply pressure on all instruments of government to reform. Although the conference highlighted serious problems with Nangarhar,s justice system, the robust senior level attendance and intensity of the dialogue suggests that many provincial leaders want the justice system to function properly.

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